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MEMORANDUM

FROM: **OFFICE OF THE CITY ATTORNEY**
MIDDLETOWN, CONNECTICUT 06457

TO: Planning & Zoning Commission

DATE: March 12, 2003

RE: Legal Opinion Request

QUESTION PRESENTED:

Whether the Planning & Zoning Commission can deny an application as incomplete in a situation in which the application and an application for a permit from the Inland Wetlands Agency were filed simultaneously?

ANSWER:

The regulations give the Commission this authority.

ANALYSIS:

Connecticut General Statutes §8-25 sets out a municipal planning commission's authority over the subdivision of land. This statute provides, in relevant part, that "[b]efore exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land." C.G.S. §8-25(a), as amended.

Both the Connecticut Appellate Court and the Connecticut Supreme Court have held that municipal planning commissions have the authority to enact subdivision regulations but such regulations may not conflict with the state statutes from which this authority is derived. Thoma v. Planning & Zoning Commission, 31 Conn. App. 643, 626 A.2d 809, cert. granted in part, 227 Conn. 910, 632 A.2d 700, affirmed 229 Conn. 325, 640 A.2d 1006 (1993); Nicoli v. Planning & Zoning Commission, 171 Conn. 89, 368 A.2d 24 (1976).

Connecticut General Statutes §8-26 provides, in relevant part, that "[i]f an application involves land regulated as an inland wetland or watercourse under the provisions of chapter 440 [C.G.S.A. §22a-28 et seq.], the applicant shall submit an application to the agency responsible for administration of the inland wetlands regulations no later than the day the application is filed for subdivision or resubdivision. The commission shall not render a decision until the inland wetlands agency has submitted a report with its final decision to such commission. In making its

decision the commission shall give due consideration to the report of the inland wetlands agency." C.G.S. §8-26, as amended.

Section 2.05.01 of the Middletown Subdivision Regulations provides, in relevant part, that "no application for special exception, subdivision or resubdivision shall be deemed complete without the submission of a notice of decision of an Inland Wetlands Permit as issued by the Middletown Inland Wetlands Agency, provided such a permit shall be required under regulations adopted by said Agency. Any plans submitted to the Commission shall conform, in all relevant respects, to those plans which were approved, or modified and approved, by said Agency."

I do not think that this Subdivision Regulation conflicts with C.G.S. §8-26. I hold this opinion for the following reason. C.G.S. §8-26 merely requires that the wetlands application be filed "no later" than the day that the subdivision application is filed. It does not require a municipal planning commission to permit an applicant to file the two applications simultaneously. As such, the statute does not prevent a commission from requiring that a developer proceed to the wetlands agency first.

In fact, the procedure set out by the Middletown Subdivision Regulations is the better practice for several compelling reasons. First, the Planning & Zoning Commission cannot, by statute, act on an application that involves a regulated activity without a report from the Inland Wetlands and Watercourses Agency. Second, this procedure prevents inconsistent, and perhaps conflicting, requirements which may be imposed by the two boards in simultaneous submission situations. Under the Middletown procedure, the concerns of the Wetlands Agency are satisfied first and the Planning Commission has its report when the application is considered. Third, the procedure established by the Subdivision Regulations avoids the very real possibility which exists in simultaneous submission cases that the wetlands report may not be received until after the close of the public hearing. This situation would prevent either the applicant or members of the public from commenting upon the report. This situation does not appear to be addressed by C.G.S. §8-26d (d) which concerns the time in which a commission must make its decision.

We have been advised that this procedure is not unique to Middletown but appears in the subdivision regulations of other communities. A review of planning and zoning case law has disclosed no cases on this subject. However, a noted land use commentator has observed that "[w]ith the exception of road improvements . . . there is limited case law on interpretation of the scope of the planning commission's power under §8-25 as to the content of subdivision regulations." Fuller, Land Use Law and Practice, Conn. Practice Series Vol. 9, §10.8 (1999/2002).

For the foregoing reasons, it is my opinion that §2.05.01 of the Subdivision Regulations does not conflict with state statute.

Timothy P. Lynch
Deputy City Attorney

TPL/es
cc: Mayor Domenique S. Thornton
Trina A. Solecki, City Attorney